IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINRY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3031 OF 2004

Ashish Aggarwal,]
of Delhi, Indian Inhabitant, Occu: Advocate,]
423/424, DS, New Rajinder Nagar,]
New Delhi 110 060] …Petitioner

Versus

University of Mumbai,]
through its Registrar, Fort,]
Mumbai 400 023.] …
Respondent.

Mr. A.B. Kamble for the Petitioner

Mr. Abhay Patki for the Respondent.

CORAM: DALVEER BHANDARI, C.J., &
S. J. VAZIFDAR, J.
DATE: AUGUST 30, 2005.

ORAL JUDGMENT (Per Dalveer Bhandari, C.J.):-

1. The petitioner passed the final year of LL.B. Course in the year 2003 from the Government Law College, affiliated to the University of Mumbai. The petitioner has an impressive academic career. The petitioner appeared in third year of five years' LL.B. Course in May, 2001 and secured second rank in the University. However, the score of the petitioner in the

subject of “Legal Language” was unusually low at 58 out of 100. Since the petitioner had previously been scoring high marks in this subject, he suspected an error in assessment. On the advice of his professors, the petitioner applied for re-valuation of his answer-sheet in the subject.

2. On re-valuation of his answer-sheet, the error was rectified and his marks were increased from 58 to 69 out of 100. The change in the marks was intimated to the petitioner vide letter of the University dated 5th February, 2002. On rectification, according to the petitioner, after re-valuation of the marks secured by him, the petitioner got 1st position by securing the highest marks in the examination. The petitioner has approached the University, and submitted that he be awarded the first rank and consequently, he be entitled for scholarship, prizes and medals, on getting 1st position in the said examination.

3. The petitioner has approached this Court with a prayer to quash the impugned Clause 10 of Ordinance 237. The petitioner has also prayed that the University of Mumbai be directed to award 1st Rank (position) and all consequential

benefits to him in the Bachelor of Legal Sciences (B.L.S.) Degree Examination, 2001.

4. Pursuant to the show-cause notice issued by this Court, Deepak G. Wasave, working as a Deputy Registrar with respondent No. 1-University, filed a detailed affidavit. In the reply-affidavit, the respondent admitted that the petitioner has appeared for final year of B.L.S. (5 year course) Examination, and he was declared successful with aggregate of 481 marks. After re-valuation of the petitioner's answer papers, it was found that the petitioner secured 69 marks in place of 58 marks in the subject 'Legal Language'. Accordingly, vide communication dated 5th February, 2002, the amended/ modified result of the petitioner came to be intimated to him. It was clear from the modified result that the petitioner's initial aggregate marks of 481 have become 492. A revised mark-sheet in that behalf was issued to the petitioner.

5. In addition to the petitioner's above aggregate marks, the petitioner was also granted 10 grace marks in accordance with Ordinance 229 of the University of Bombay. This Ordinance stipulates awarding up to 10 grace marks to the students for participation in extra-curricular activities.

According to the Ordinance, the marks so awarded are not to be counted for the award of scholarship, prizes or medals or any other awards. The petitioner is aggrieved by the said Ordinance and prays that the said Ordinance be quashed.

6. The University has placed on record Circular No. UG/155 of 1998. According to Clause 0.229 thereof, candidates appearing for any of the University Examinations/ examinations conducted on behalf of the University, except those where point system of evaluation is introduced, shall be eligible for the award of maximum 10 grace marks at their option, wherever necessary, in addition to the marks secured in each head of passing for participation in any of the activities mentioned therein. Admittedly, the petitioner participated in the National Social Service Programme (NSSP) and satisfactorily completed 120 hours of social work comprising the time spent in at least two types of projects as certified by the principal of his college and forwarded by the NSSP Coordinator.

7. Clause 7 of the circular reads as under:-

> "The benefit of 10 grace marks to candidates would be available only in any one of the activities .., at their option subject to their fulfilling following conditions:-
>
> 1. ...

2. ...
3. ...
4. ...
5. ...
6. ...

7. That the grace marks under this Ordinance will not be counted for the award of scholarships, prizes and medals or any other awards. ”

In view of clause 7 of the circular, the marks of extra-curricular activities cannot be added in the marks which the petitioner obtained in the examination.

8. In the reply-affidavit, it is mentioned that the petitioner, having secured overall 492 marks (after re-valuation), still cannot be considered for the first position in the final year examination and for award of rank certificate, for the reason that one Kumari Gauri Rao had secured 493 marks at the final year LL.B. Examination held in May, 2001 and as such, Kumari Gauri Rao was the first rank holder in the aforesaid examination. After following the necessary procedures as laid down for re-valuation of the answer book, it was intimated to the petitioner that in accordance with the

then existing Ordinance 237-A relating to the re-valuation of answer books, the marks secured by the petitioner will not be

taken into consideration for the purpose of award of scholarship, prizes, medals or determining the order of merit or for any other purposes. As such, the request of the petitioner was declined by the University.

9. We have heard the learned counsel for the parties and carefully perused the pleadings and documents placed on record. In view of Clause 7 of Circular No. UG/155 of 1998, the University of Mumbai was justified in not computing the grace marks in order to determine the order of merit of the petitioner.

10. The expression 'Grace' has been defined in many leading dictionaries. According to 'Black's Law Dictionary', Sixth Edition, 'Grace' has been defined as 'a favour or indulgence, as distinguished from a right'. Similarly, 'The Law Lexicon', Second Edition, defines 'Grace' as 'concession not claimable as of right'. It has also been defined as a 'benefit gratuitously conferred'.

11. 'The Random House Dictionary', College Edition, defines 'Grace' as 'favour or good will or mercy or manifestation of favour'. 'The Winston's Simplified Advanced Dictionary',

First Indian Edition, defines 'Grace' as 'Something granted as a favour, rather than as a right'. It has also been defined as 'an unmerited bestowal of something desirable'.

12. According to 'The New Oxford Dictionary', VIth Edition, the meaning of 'Grace' is 'Unmerited favour of God'. The unmerited favour cannot be computed for determining the merit. What is given as concession, mercy or favour can never be claimed as a matter of right.

13. In this view of the matter, we cannot find any fault with the aforementioned Clause 7 of the University circular that the grace marks cannot be added in the marks which the petitioner obtained in the examination. The petitioner cannot claim, as a matter of right, that the grace marks given to the petitioner be taken into consideration for the purpose of determining the order of merit. The object and reason of incorporating Clause 7 of the said circular is salutary. The University is justified in not taking grace marks into consideration while determining the first position of the student. As long as the University is uniformly applying this clause in all cases, no case of interference is made out. We accordingly uphold the validity and legality of the said

clause of the University circular, by which grace marks are not added in determining the merit of the candidate.

14. Kumari Gauri Rao secured 493 marks, whereas the petitioner secured 492 marks in final LL.B. Examination. Therefore, Kumari Gauri Rao was correctly awarded 1st position because she secured the highest marks in the said examination.

15. On consideration of the totality of the facts and circumstances, no fault can be found in the stand taken by the University of Mumbai in this case. The petition, being devoid of any merit, is accordingly dismissed. In the facts and circumstances, we direct the parties to bear their own costs.

CHIEF JUSTICE

S.J. VAZIFDAR, J.